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Davidson, Davidson & Kappel, LLC
485 7th Avenue
14th Floor
New York, NY 10018

| EXAMINER | |
|---|---|
| HAND, MELANIE JO | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/517,331
Filing Date: December 09, 2004
Appellant(s): SUAREZ, CLAUDIO MIGUEL

William C. Gehris
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 08 May 2008 appealing from the Office action mailed 10 September 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on February 11, 2008 has not been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| WO 99/27879 A2 | Roxendal *et al.* | 6-1999 |

*Selected Terms in Colloid and Interface Science*, Dr. Laurier L. Schramm, ©1996-2003 www.ucalgary.ca/~schramm/lyophil.htm

*Textile Chemistry Terminology*, Clothes Care Research Center © 2008 www.fabricology.com/science/textile-chemistry.php

**(9) Grounds of Rejection**

***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-14 and 18-27 are rejected under 35 U.S.C. § 102(b) as being anticipated by Roxendal *et al.* (WO 99/27879 A2; hereinafter: "Roxendal").

Regarding claims 11 and 24, Roxendal teach an article (1) for the absorption and retention of a liquid fluid, comprising: a cover (2) permeable to fluids and configured to be in contact with a user's skin; a transfer layer (5) provided below the cover, the transfer layer (5)

including a top layer (5d) of predominantly hydrophobic fibrous material and a bottom layer (5e) of predominantly hydrophilic material superimposed on the top layer and joined to the top layer (5d) at a plurality of longitudinal joining regions (10) of the top and bottom layers so as to form a plurality of channels (10) at the joining regions (10), a plurality of peaks being formed of the top and bottom layers (5d, 5e) between adjacent ones of the plurality of channels (10), wherein a transversal thickness of the top and bottom layers is lower at the joining regions than at the peaks, wherein the channels (10) are in contact with the cover (2);

an absorbent core (4) configured to absorb and retain the liquid fluid (page 6, line 17-page 7, line 14; page 8, lines 12-17; page 9, line 31-page 12, line 5; page 12, lines 14-16)(see figures 2, 5 and 11, infra).

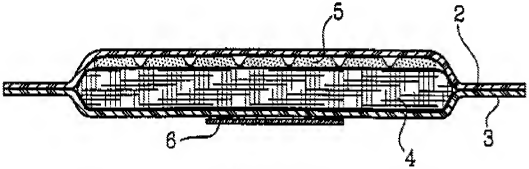


FIG.2


FIG.5

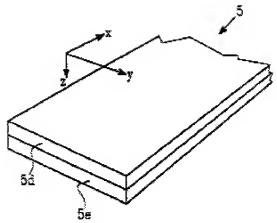


FIG.11

Regarding the limitation "longitudinal," Roxendal teaches at least one embodiment where the bonded regions extend diagonally, and thus extend partially in a longitudinal direction (see figure 1, infra).

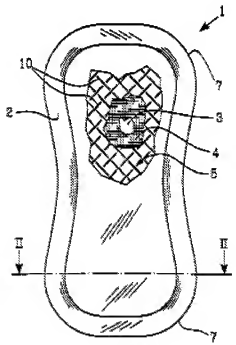


FIG.1

Regarding claim 12, Roxendal teach peaks (9) which define zones of distribution to the channels (10)(liquid flows in a z-directions down peaks to channels).

Regarding claims 13, 14, 18-20 and 25, Roxendal teaches that top layer (5d) is more hydrophobic than the lower layer allowing unidirectional downward flow in a z-direction (5e)(page 12, lines 14-16).

Regarding claims 21 and 26, Roxendal teaches a diaper (1)(abstract).

Regarding claim 22, Roxendal teaches parallel lines (10)(figure 1).

Regarding claims 23 and 27, Roxendal teaches that the channels (10) form a linear regions of fluid distribution (figure 1).

***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Roxendal.

Roxendal discloses higher thickness fibers in upper layer (5d) relative to thinner fiber thickness in lower layer (5e). Roxendal does not expressly disclose the specifically claimed peak and fiber dimensional limitations or fiber density. Mere changes in size alone are not sufficient to patentably distinguish a claimed invention over the prior art. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984).

**(10) Response to Argument**

Regarding claims 11 and 24, applicants assert that Roxendal does not teach a transfer layer having a top layer of predominately hydrophobic fibrous material. Applicants assert that Roxendal merely discloses a hydrophilicity gradient in the z-direction of layer (5). This argument is not persuasive because applicants' specification does not specifically define "predominantly hydrophobic" or "predominantly hydrophilic". Nor does applicants' specification provide specific materials for the hydrophobic or hydrophilic fibrous materials. The terms "hydrophobic" and "hydrophilic" are qualitative or relative terms concerning the relative degree of moisture absorption or attraction of a material (see, e.g., definitions for "hydrophobic" and "hydrophilic" in *Selected Terms in Colloid and Interface Science*, www.ucalgary.ca/~schramm/lyophil.htm; see also, *Textile Chemistry Terminology*, www.fabricology.com/science/textile-chemistry.php). Applicants' specification does not provide any quantitative measure for distinguishing these terms. As such, the claims are construed according to the broadest reasonable interpretation consistent with the overall description of the specification. See MPEP § 2111. Roxendal's top layer (5d) is of fibrous material that is predominantly hydrophobic (low degree of moisture absorption) relative to that of lower layer (5e). The lower layer (5e) is made of a fibrous material that is predominantly hydrophilic (high degree of moisture absorption) relative to the top layer (5d).

Regarding claim 12, applicants assert that Roxendal does not show or teach a plurality of peaks that define zones of superficial liquid distribution to the channels. This argument is not persuasive because as shown in figure 5, supra, liquid flows downward in a z-direction through the and/or down the peaks to the channels (10).

Regarding claims 15-17, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant

relies (i.e., the segments and points or sectors of union in Roxendal's transfer layer; or the fiber density in the peaks relative to the joining regions, do not contribute to improving the capacity of absorption and transfer of liquids which are retained in the absorbent core) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). This argument is not persuasive because claims 15-17 are directed to dimensional limitations, there is no recitation in the claim concerning the capacity of absorption and transfer of fluids.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melanie J Hand/

Primary Examiner, Art Unit 3761

Conferees:

Tatyana Zalukaeva

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761

Angela D Sykes

/Angela D Sykes/

Supervisory Patent Examiner, Art Unit 3762